

# WIPO



WIPO/IPTK/RT/99/6B

ORIGINAL: Spanish

DATE: October 19, 1999

E

WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

## ROUNDTABLE ON INTELLECTUAL PROPERTY AND TRADITIONAL KNOWLEDGE

Geneva, November 1 and 2, 1999

EFFORTS AT PROTECTING TRADITIONAL KNOWLEDGE:  
THE EXPERIENCE OF PERU

*Document prepared by Mrs. Begoña Venero Aguirre, Head of Patents,  
National Institute for the Defense of Competition and Intellectual Property (INDECOPI),  
Lima*

### The Process of Drawing Up the Proposal

In February 1996, at the initiative of the Ministry of Agriculture and INDECOPI (National Institute for the Defense of Competition and Intellectual Property), five working groups were set up, including representatives of more than 15 public and private sector institutions, with the aim of implementing, in the shortest possible time, a flexible and effective regime of access to genetic resources, and guaranteeing protection of traditional knowledge and the fair and equitable distribution of the benefits derived from the use thereof.

One of these working groups (Group 4) was entrusted with creating a general legal framework for protecting the knowledge of indigenous communities. As of June 28, 1996 its aim was to establish legal mechanisms guaranteeing fair and equitable distribution, within and between indigenous communities, of the benefits derived from the use of their knowledge, innovations and practices associated with genetic resources.

Group 4 initially comprised representatives of the following institutions: the Center for Development Studies and Promotion –DESCO, the Peruvian Indigenous Peoples Institute, the National Institute of Natural Resources, the Ministry of Industry, Tourism, Integration and International Trade Negotiations, and the Peruvian Environmental Law Society. Subsequently, the group incorporated the Interethnic Association for Development of Peruvian Forests (AIDSESP), the Peruvian Confederation of Amazonian Nationalities (CONAP) and the Technical Secretariat of Indigenous Affairs of the Ministry for the Promotion of Women and Human Development (which replaced the Peruvian Indigenous Peoples Institute). INDECOPI was entrusted with coordinating this group. The multidisciplinary focus of this group should be highlighted: it comprised lawyers, economists, sociologists, anthropologists, biologists and representatives of indigenous organizations.

This working group fulfilled its mandate and drew up a preliminary draft Supreme Decree, entitled special regime for protecting the knowledge of native and rural communities (dated June 28, 1996)<sup>1</sup>. Nevertheless, Group 4 continued to work toward the aim of refining this initial draft.

It took a little more than a year to prepare a new version of the draft (dated August 2, 1997). This new version was circulated among experts on the subject (researchers specializing in indigenous affairs, anthropologists, sociologists, biologists, representatives of indigenous organizations and so on). Based on the comments and suggestions received from these experts, the group continued working.

The group required direct input from indigenous peoples. Two indigenous representatives were therefore included. In addition, a survey was prepared with questions on how to protect the knowledge of indigenous peoples, and was circulated among those participating in the consultation of indigenous representatives from Amazonia, organized by the Ministry for the Promotion of Women and Human Development, with the support of the World Bank, which took place in Iquitos from June 1 to 5, 1998. Similarly, in order to gather

---

<sup>1</sup>It should be specified that Group 4 received very valuable information from Group 1 entrusted with preparing an analysis of the forms of organization of indigenous communities in Peru and of the mechanisms for distributing the benefits generated collectively.

together comments from the indigenous representatives of the Sierra, a version of the draft of August 2, 1997 was sent to a series of rural communities.

The results achieved by the aforementioned survey and the dispatch of the draft were fairly limited. Although the group never considered these options to be ideal, but rather alternatives to be explored until such time as the ideal option could be found (organizing consultations with the participation of indigenous representatives from the whole country), the rare success achieved confirmed the group's perception regarding the need to hold consultations on the subject.

Consequently, pursuant to Article 6(a) of ILO Convention 169 Indigenous and Tribal Peoples in Independent Countries, 1989 – which states that indigenous peoples must be consulted whenever consideration is being given to legislative or administrative measures which may affect them directly – two workshops were organized for indigenous representatives from the whole country.

These workshops were jointly organized by the Ministry for the Promotion of Women and Human Development and INDECOPI, and were conducted under the auspices of the United Nations Development Programme (UNDP) and the International Labour Organization (ILO). They took place in the cities of Lima and Urubamba (Cusco) in April and May 1999 respectively. 16 indigenous representatives participated in the workshop that took place in Lima, while the workshop held in Urubamba was attended by 36 indigenous representatives. At these workshops, a new version of the draft was presented and analyzed (dated April 20, 1999).

These workshops, in particular that which took place in Urubamba, demonstrated the preferences and expectations of the indigenous representatives in relation to the subject.

By contrast, in order to ascertain the opinions of the other players, an international seminar was held on the subject. The international seminar, entitled traditional knowledge and genetic resources: an opportunity in the global market, was jointly organized by the World Intellectual Property Organization (WIPO) and INDECOPI, and took place in May 1999. This seminar was attended by indigenous representatives, non-governmental organizations, pharmaceutical laboratories, State bodies, academics, international experts, and soon.

The workshops and seminar revealed the viewpoints of the different players and also established the challenge of redefining the draft, based on the comments and suggestions received. This new proposal claims to achieve a balance between the different interests considered and seek to benefit all the players involved. This proposal is based on the idea that establishing an excessively protectionist or pro-indigenous regime would drive away potential users of the knowledge, while establishing an excessively liberal regime could generate an adverse reaction on the part of indigenous peoples. Within both assumptions, the proposal would be condemned to failure. It is therefore necessary to strike a balance.

In order to have available more elements that allow this balance to be achieved, the Proposal for a Protective Regime for the Collective Knowledge of Indigenous Peoples was published in the Official Gazette "El Peruano" ("The Peruvian"). The idea of this "prepublication" is to promote the public debate on the Proposal, in order to gather comments that might enrich it, not only from the different players but also from civil society as a whole.

It should be pointed out that this Proposal is based on the guidelines established by the Convention on Biological Diversity, in particular Article 8(j), as well as by Decision 391 of the Commission of the Cartagena Agreement which establishes a Common Regime on Access to Genetic Resources for Andean countries (Bolivia, Colombia, Ecuador, Peru and Venezuela), in particular in Article 7.

Special mentions should also be made of Article 63 of the Industrial Property Law approved by Legislative Decree No. 823 which provides for the possibility of establishing a protection regime and, where necessary, a register of the knowledge of native and rural communities.

### The Proposal for a Protective Regime for the Collective Knowledge of Indigenous Peoples

The main elements of the Proposal are as follows:

- This protective regime applies to the knowledge relating to the properties of the biological resources developed collectively by indigenous peoples, based on their contact with nature<sup>2</sup>.
- All indigenous peoples may benefit from this protective regime, including ethnic groups with whom no contact has been made and those which, although integrated, have not been legally recognized as native or rural communities.
- This protective regime has the following aims:
  - (a) promoting respect, protection, preservation, the broadest possible application and development of the collective knowledge of indigenous peoples;
  - (b) promoting the just and equitable distribution of the benefits derived from the use of this knowledge;
  - (c) promoting the use of this knowledge for the benefit of humanity.
- Among the principles on which this protective regime is based, the following are highlighted:
  - (a) present generations of indigenous peoples are considered to be custodians or administrators of this knowledge for their own benefit and that of future generations. This knowledge is regarded as a legacy bequeathed by previous generations for present and future generations;
  - (b) the knowledge protected under this regime is that which has been developed collectively. It belongs to one or more indigenous peoples and not to specific individuals forming part of that (those) people(s).

---

<sup>2</sup>This does not affect the exchange of knowledge between indigenous peoples based on customary practices.

In many cases, knowledge will be shared by different indigenous peoples, be it because the knowledge has been developed in parallel or because they have exchanged knowledge between them.

- (c) The rights of indigenous peoples over their knowledge are inalienable: such rights cannot be transferred and may be the subject only of licenses for use.
- Indigenous peoples are holders of rights over the collective knowledge which they possess. Identifying the indigenous people(s) that developed a particular item of knowledge would have been impossible in most cases. It has therefore been considered that the rights of indigenous peoples over their knowledge are based on the fact that they possess such knowledge.
  - Any person interested in gaining access to knowledge for scientific, commercial or industrial purposes shall seek the prior informed consent of one or more indigenous peoples who possess the knowledge in question, unless the knowledge is in the public domain<sup>3</sup>. Indigenous peoples may opt to share, or not to share, their knowledge, taking into account the information supplied to them regarding the aims, risks or implications of such activity, including the possible uses of the knowledge and, where appropriate, its value.
  - In the case of knowledge to be found in the public domain, the prior informed consent of a particular indigenous people will not be required. Nevertheless, compensation for its use may be agreed.
  - If access to knowledge is sought for commercial or industrial purposes<sup>4</sup>, a license contract must be signed, establishing conditions for appropriate remuneration for such access and guaranteeing equitable distribution of the benefits derived therefrom.
  - In all cases, i.e. irrespective of whether the item of knowledge in question is in the public domain, and where access to knowledge is sought for commercial, industrial or only scientific purposes, any person using collective knowledge and commercializing products developed from said collective knowledge must devote a minimum of 0.5 percent of the value of the sales resulting from the commercialization of these products to the Fund for the Development of Indigenous Peoples set up with this standard.
  - The Fund for the Development of Indigenous Peoples is designed to contribute to the full development of indigenous peoples through the funding of projects and other activities. The administration of this Fund will be entrusted to an Administrative Committee comprising representatives of indigenous peoples' organizations, and of a national organizations specializing in the field. The resources of this Fund will come from the

<sup>3</sup> An item of knowledge is understood to be in the public domain when it has been made accessible to persons other than indigenous peoples, through the media, publications or the commercialization of the biological resource on which it is based outside the sphere of indigenous peoples.

<sup>4</sup> It should be specified that those whose wish to have access to knowledge for scientific application purposes will not have to sign any kind of contract. It will be sufficient for them to obtain the prior informed consent of the indigenous people which possesses the knowledge in question.

percentage mentioned in the previous paragraph, as well as from the donations received and fines imposed.

This Fund was set up as a means of distributing the benefits obtained through the application of the regime among all indigenous peoples. Within this arrangement, all indigenous peoples are able to benefit indirectly, rather than merely those indigenous peoples who “negotiate” with third parties, provided that they submit projects to the Administrative Committee and the Committee approves them.

- A Register of Collective Knowledge of Indigenous Peoples was set up<sup>5</sup>. This is an optional register entrusted to the Competent National Authority<sup>6</sup>; the failure to enter knowledge in the Register does not prejudice the enjoyment or full exercise of the rights granted under this regime.

This Register is designed to:

- (a) preserve the collective knowledge of indigenous peoples;
  - (b) identify the collective knowledge held by indigenous peoples<sup>7</sup>; and,
  - (c) provide information regarding the uses made by indigenous peoples of biological resources<sup>8</sup>.
- The license for using collective knowledge held by an indigenous people will not prevent others from using it or from granting licenses for the same knowledge. Nor will this license affect the right of present and future generations to continue to use and develop collective knowledge. It has therefore been considered that the consent of all the indigenous peoples holding the knowledge is not required for this type of contract to be drawn up.
  - Certain minimum clauses exist that should be included in the contracts licensing the use of knowledge, if access is sought to the protection granted by this regime. Among these, the following are highlighted:
    - (a) The establishment of royalties that indigenous peoples will receive for the use of their knowledge. These royalties will include an initial payment or some form of direct immediate compensation for indigenous peoples, and a percentage of the value of the sales resulting from the commercialization of the products developed from said knowledge, where appropriate.

<sup>5</sup>If a register is established in contravention of any of the provisions of the current regime, or is based on false or inaccurate data contained in the request and that is essential, it may be canceled *ex officio* or at the request of the party concerned.

<sup>6</sup>It is proposed that the INDECOPI Office of Inventions and New Technologies should act as the Competent National Authority.

<sup>7</sup>Duly accredited representatives may be sent to indigenous peoples in order to assist them in registering their knowledge.

<sup>8</sup>The possibility has been envisaged of providing information on: a) the uses made by particular indigenous peoples of biological resources, and b) the names of indigenous peoples holding knowledge on specific uses of biological resources.

- (b) The supply of sufficient information relating to the purposes, risks or implications of this activity, including the possible uses of knowledge and, where appropriate, the value thereof.
  - (c) The obligation of the licensee to inform regularly and in general terms the licensor of the advancement in research, and the industrialization and commercialization of the products developed from the knowledge referred to in the license.
- The contracts licensing use of knowledge must be drawn up in writing and may be entered in a register<sup>9</sup> which will be drawn up by the Competent National Authority for that purpose.
  - An indigenous people holding knowledge will be protected against the disclosure, acquisition or use of its knowledge without its consent and in an unfair manner, insofar as this knowledge is not in the public domain. It will also be protected against unauthorized disclosure, should a third party have gained legitimate access to its knowledge albeit with an obligation not to disclose it.
  - Indigenous peoples holding rights may take legal action against any person infringing the rights referred to in the previous paragraph. Legal action is also taken in the case of imminent danger which may lead to the infringement of these rights. In both cases, the burden of proof will fall on the accused party.
  - It should be emphasized that this protection regime incorporates a new requirement for obtaining a patent or a plant variety breeder's certificate, in cases in which applications are filed in relation to products or processes obtained or developed from collective knowledge, unless the collective knowledge in question is in the public domain.

To sum up :

The Proposal for a Protective Regime for Collective Knowledge of Indigenous Peoples introduces a new *suigeneris* form of intellectual property protection, which seeks to:

- overcome the natural mistrust of indigenous peoples by granting them incentives with a view to their deciding to register, preserve, develop and share their knowledge; and,
- promote closer links between indigenous peoples and potential users of their knowledge with the establishment of clear and rational rules allowing both parties to obtain benefits from the protective regime.

---

<sup>9</sup>See footnote 5.

[Annexfollows]



PROPOSAL FOR A PROTECTIVE REGIME FOR COLLECTIVE KNOWLEDGE OF  
INDIGENOUS PEOPLE

TITLE I

RECOGNITION OF RIGHTS OF INDIGENOUS PEOPLES IN THEIR COLLECTIVE  
KNOWLEDGE

*Article 1. - Recognition of rights.*

The State of Peru shall recognize the right and authority of indigenous peoples to take decisions on their collective knowledge.

TITLE I

DEFINITIONS

*Article 2. - Definitions.*

For the purposes of the present instrument, the following definitions shall apply:

(a) Collective knowledge:

Knowledge relating to the properties of biological resources, developed by indigenous peoples. The intangible component envisaged in Decision 391 of the Commission of the Cartagena Agreement includes this type of collective knowledge.

(b) Prior informed consent:

Authorization for carrying out a particular activity which involves gaining access to and using collective knowledge, subject to the supply of sufficient information relating to the aims, risks or implications of said activity, including the possible uses of the knowledge and, where appropriate, the value thereof.

(c) Contract licensing use of collective knowledge:

Agreement concluded between one or more indigenous peoples and a third party, which incorporates terms and conditions on the use of collective knowledge. These contracts may constitute an annex to the contract mentioned in Article 34 of Decision 391 of the Commission of the Cartagena Agreement, which establishes a Common Regime on Access to Genetic Resources.

(d) Indigenous peoples:

These are peoples descended from populations that lived in the country or in a geographical region to which the country belonged at the time of the conquest or colonization, or of the establishment of the current State borders and which, irrespective of its legal status, retains all its own social, economic, cultural and political institutions, or part thereof.

These peoples include ethnic groups with whom no contact has been made and those which, although integrated, have not even been legally recognized as native or rural communities.

Native communities: these originate from the tribal groups of the Selva and Ceja de Selva, and are made up of series of families linked by the following main elements: language or dialect, cultural and social characteristics, joint and permanent occupancy and use of a single territory, with concentrated or dispersed settlement.

Rural communities: these are organizations of public interest, with a legal existence and personality, and comprise families which inhabit and control particular territories linked by ancestral, social, economic and cultural bonds expressed in the joint ownership of land, communal labor, mutual aid, democratic government, and the development of multisectoral activities, whose aims are directed toward the complete fulfillment of their members and the country.

For the purposes of the present instrument, any reference to "indigenous peoples" shall be understood to refer to native and rural communities, and other indigenous peoples.

(e) Biological resources:

Genetic resources, organisms or parts thereof, populations, or any other type of biotic component of the ecosystems of real value or use, or potential for humanity.

### TITLE III

#### SPHERE OF PROTECTION

##### *Article 3. - Sphere of standard protection.*

This instrument shall establish the special protection regime to which Article 63 of the Industrial Property Law refers, as approved by Legislative Decree No. 823, and shall be applied to the collective knowledge of indigenous peoples.

*Article 4. - Preservation and sustainable use of biological diversity. Access to genetic resources.*

The preservation and sustainable use of biological diversity and the access to genetic resources associated with the collective knowledge of indigenous peoples shall be governed by the relevant legislation in force.

*Article 5. - Exceptions to the regime.*

The current regimes shall not affect the traditional exchange between indigenous peoples of the collective knowledge protected under this regime, or the use of the collective knowledge associated with biological resources that are commercialized in the sphere of the national market and that have not been processed industrially.

#### TITLE IV

#### OBJECTIVES

*Article 6. - Objectives of the regime.*

The current regimes shall have the following objectives:

- (d) promoting respect, protection, preservation, the broadest possible application and development of the collective knowledge of indigenous peoples;
- (e) promoting fair and equitable distribution of the benefits derived from the use of this collective knowledge;
- (g) promoting the use of this knowledge for the benefit of humanity.

#### TITLE V

#### GENERAL PRINCIPLES

*Article 7. - Conditions for access to collective knowledge.*

Any persons seeking access to collective knowledge for scientific, commercial and industrial purposes shall request the prior informed consent of one or more indigenous peoples holding the collective knowledge in question.

In case of access for commercial or industrial purposes, a license shall be signed which establishes conditions for appropriate remuneration for said access and guarantees equitable distribution of the benefits derived therefrom.

Any person with access to a particular form of collective knowledge through an indigenous group shall devote 0.5 percent of the value of the sales resulting from the

commercialization of the products developed from said collective knowledge to the Fund for the Development of Indigenous People, as referred to in Articles 31 et seq. The parties concerned may allocate a higher percentage.

*Article 8. - Role of present generations.*

The present generations of indigenous peoples shall preserve, develop and administer their collective knowledge for their own benefit and that of future generations.

*Article 9. - Collective nature of knowledge.*

The collective knowledge protected under this regime shall be that which belongs to an indigenous people and not to particular individuals included among said people. It may belong to various indigenous peoples. These rights shall be independent of those that may be generated within indigenous groups, and for the distribution of whose benefits traditional systems may be used.

*Article 10. - Collective knowledge and cultural heritage.*

Collective knowledge shall form part of the cultural heritage of indigenous peoples.

*Article 11. - Inalienable and imprescriptible nature of rights.*

The rights of indigenous peoples in their collective knowledge shall be inalienable and imprescriptible.

*Article 12. - Collective knowledge in the public domain.*

In the case of collective knowledge that is in the public domain, indigenous peoples may, by mutual agreement with the requesting parties, fix compensation for use of the knowledge. In any case, at least 0.5 percent of the value of the sales resulting from the commercialization of the products developed from said collective knowledge shall be devoted to the Fund for the Development of Indigenous Peoples, to which reference is made in Article 31 et seq. Under the current regime, an item of collective knowledge shall be understood to be in the public domain when it has been accessible to persons other than indigenous peoples, through the media, publications, or the commercialization of the biological resource on which it is based outside the sphere of indigenous peoples.

*Article 13. - Representatives of indigenous peoples.*

Under this regime, indigenous peoples shall be represented by those persons whom they have designated, in accordance with the legal mechanisms specified by the General Law on Rural Communities, the Law on Native Communities and Agrarian Development of the Regions of Selva and Ceja de Selva, or through their traditional decision-making systems, and such decisions may be represented by federations, confederations, municipal directives and so on.

TITLE VI

REGISTER OF COLLECTIVE KNOWLEDGE OF INDIGENOUS PEOPLES

*Article 14. - Optional nature of the register.*

The Register of Collective Knowledge of Indigenous Peoples shall be merely optional rather than essential, such that its non-existence shall not prejudice the enjoyment or full exercise of the rights recognized and guaranteed by the current regime.

*Article 15. - Aim of the Register of Collective Knowledge.*

The aim of the Register of Collective Knowledge of Indigenous Peoples is to:

- (d) preserve the collective knowledge of indigenous peoples;
- (e) identify the collective knowledge held by indigenous peoples; and,
- (f) provide information regarding the uses made by indigenous peoples of biological resources.

*Article 16. - Requests for registration of collective knowledge.*

The requests for registration of collective knowledge of indigenous peoples submitted to the Competent National Authority shall contain:

- (a) identification of the indigenous people requesting registration of its knowledge;
- (b) identification of the representative;
- (c) an indication of the biological resource on which the collective knowledge is based, whereby the indigenous name may be used;
- (d) an indication of the use(s) made of the biological resource in question;
- (e) a clear and completed description of the collective knowledge subject to registration; and,
- (f) a statement containing the agreement to register the knowledge on behalf of the indigenous people.

*Article 17. - Request procedure.*

The Competent National Authority shall verify, within ten (10) days of the request being submitted, that it sets forth all the information specified in the previous article.

Should any kind of omission have been made, the indigenous people requesting registrations shall be notified that the request should be completed, within six (6) months, which can be extended on request, subject to notice that the request should be abandoned. Once the Competent National Authority has verified that the request sets forth all the information specified in the previous article, it shall proceed to register the collective knowledge in question.

*Article 18. - Dispatch of representatives of the Competent National Authority.*

In order to facilitate the registration of collective knowledge of indigenous peoples, the Competent National Authority may dispatch duly accredited representatives to the indigenous peoples so as to collect the requisite information in order to process the desired registration requests.

*Article 19. - Access to the information contained in the Register.*

The Register of Collective Knowledge of Indigenous Peoples may not be consulted by third parties. Access to the registration of collective knowledge shall be granted only to persons who have the written consent of the indigenous people holding said Register.

Notwithstanding the provisions of the previous paragraph, information may be requested from the Competent National Authority regarding:

- (a) the uses particular indigenous peoples make of biological resources; and,
- (b) the names of the indigenous peoples holding collective knowledge concerning specific uses of biological resources.

## TITLE VII

### LICENSES

*Article 20. - Obligation to draw up contract licenses in writing.*

Indigenous people(s) holding collective knowledge may grant third parties licenses for using said knowledge only in the form of a written contract.

The consent of all the indigenous peoples holding the same knowledge is not required for drawing up these contracts.

*Article 21. Content of the license contract.*

Under the current regime, the contracts shall contain at least the following clauses:

- (d) identification of the parties;
- (e) a description of the collective knowledge referred to in the contract;

- (f) the establishment of royalties that indigenous peoples shall receive for the use of their collective knowledge. These royalties shall include an initial payment or some form of immediate direct compensation for the indigenous peoples and a percentage of the value of the sales resulting from the commercialization of the products developed from said collective knowledge, where appropriate;
- (g) the supply of sufficient information relating to the aims, risks or implications of said activity, including the possible uses of the collective knowledge and, where appropriate, the value thereof;
- (h) the obligation of the licensee to inform regularly and in general terms the licensor of the advances made in research on, and industrialization and commercialization of, the products developed from the collective knowledge referred to in the license.

Should the contract contain a non-disclosure obligation, explicit references shall be made thereto.

*Article 22. - Optional inclusion of license contracts.*

At the request of any of the parties, license contracts may be entered in a register which shall be kept for this purpose by the Competent National Authority.

*Article 23. - Requests for license contract registration/confidential nature of the contract*

The requests for license contract registration made to the Competent National Authority shall contain :

- (a) identification of the indigenous peoples that are party to the contract and their representatives;
- (b) identification of the other parties to the contract and their representatives;
- (c) a copy of the contract; and,
- (d) a statement containing the agreement to draw up the license contract on behalf of the indigenous people.

The contract may not be consulted by third parties, unless expressly authorized by the parties thereto.

*Article 24. - Request procedure.*

The Competent National Authority shall verify, within ten (10) days of the request being submitted, that the request sets out all the information specified in the previous article.

Should any kind of omission have been made, any person requesting registration will be notified that the request should be completed, within six (6) months, which can be extended on request, subject to notice that the request should be abandoned.

*Article 25. - Scope of licenses for use.*

The license for using collective knowledge of an indigenous people shall not prevent others from using it, or from granting licenses for the same knowledge. Nor shall this license affect the right of present and future generations to continue using and developing collective knowledge.

*Article 26. - Prohibition to grant sublicenses.*

Sublicenses may be granted only with express authorization of the indigenous people granting the license.

*Article 27. - Verification of the content of the contract.*

In order to enter a license, the Competent National Authority shall, within thirty (30) days of the request being submitted, verify whether the clauses mentioned in Article 21 are respected.

TITLE VIII

CANCELLATION OF REGISTRATION

*Article 28. - Grounds for cancellation of registration.*

The Competent National Authority may cancel, *ex officio* or at the request of a party, registration of collective knowledge or a license for use, subject to a formal interview with the parties concerned, provided that the registration or license has been granted:

- (a) in contravention of any of the provisions of the current regime;
- (b) on the basis of false or inaccurate data contained in the request and that are essential.

The cancellation actions stemming from this article may be undertaken at any time.

*Article 29. - Registration cancellation request.*

The registration cancellation request shall set out or add, as appropriate, the following:

- (a) identification of the person requesting the cancellation;
- (b) identification of the representative or attorney, as appropriate;
- (c) registration of the subject of cancellation;
- (d) an indication of the legal basis for the action;
- (e) evidence justifying the grounds for cancellation invoked;



- (f) residence address where the registration holders shall be notified of the requested cancellation;
- (g) as appropriate, a copy of any power of attorney required; and,
- (h) copies of the request and its precautions for the registration holder.

*Article 30. - Request procedure.*

A copy of the request shall be sent to the person who appears to be the registration holder for a period of thirty (30) days, immediately following which the case records shall be forwarded for settlement, with or without the respective reply.

TITLE IX

FUND FOR THE DEVELOPMENT OF INDIGENOUS PEOPLES

*Article 31. - Purpose of the Fund for the Development of Indigenous Peoples.*

The Fund for the Development of Indigenous Peoples shall be set up with the aim of contributing to the full development of indigenous peoples through the funding of projects and other activities. This Fund shall enjoy economic, administrative and financial autonomy.

*Article 32. - Access to the resources of the Fund for the Development of Indigenous Peoples.*

Indigenous peoples shall be granted access to the resources of the Fund for the Development of Indigenous Peoples by means of projects, subject to evaluation and approval of the Administrative Committee.

*Article 33. - Administration of the Fund for the Development of Indigenous Peoples.*

The Fund for the Development of Indigenous Peoples shall be administered by representatives of indigenous peoples' organizations, and of a national organization specializing in the field, i.e. the bodies comprising the Administrative Committee.

The Administrative Committee shall inform the organizations representing indigenous peoples of the resources received.

The Competent National Authority shall determine the maximum amount or percentage of the resources of the Fund for the Development of Indigenous Peoples that shall be devoted to covering the expenses incurred by its administration.

*Article 34. -Obligation to submit sworn statements by Administrative Committee members.*

Members of the Administrative Committee shall submit a sworn statement of property and income to the Competent National Authority at the time they take up their duties and on an annual basis.

*Article 35. -Support for the Multidisciplinary Advisory Committee.*

The Administrative Committee of the Fund for the Development of Indigenous Peoples shall enjoy the support of the Multidisciplinary Advisory Committee to which reference is made in Article 60.

This Committee shall also advise indigenous peoples accordingly in relation to project preparation and implementation.

*Article 36. -Resources of the Fund for the Development of Indigenous Peoples*

The resources of the Fund for the Development of Indigenous Peoples shall be obtained from the Public Budget, international technical cooperation, donations, the percentage of the economic benefits to which reference is made in Articles 7 and 12, the fines mentioned in Article 56, and other contributions.

## TITLE X

### PROTECTION GRANTED BY THIS REGIME

*Article 37. -Rights of indigenous peoples holding collective knowledge .*

*An indigenous people holding collective knowledge shall be protected against the disclosure, acquisition or use of such collective knowledge without their consent and in an unfair manner, insofar as this collective knowledge is not in the public domain.*

Similarly, it will be protected against unauthorized disclosure in the case where a third party has gained legitimate access to the collective knowledge but with a non-disclosure obligation.

*Article 38. -Actions in cases of infringement of indigenous peoples' rights.*

Indigenous peoples holding collective knowledge may take action against any person infringing the rights specified in the previous article. Action may also be taken in cases of imminent danger of these rights being infringed. Infringement proceedings may be instituted *ex officio* by decision of the Competent National Authority.

*Article 39. - Inversion of the burden of proof*

Where it is alleged that the rights of an indigenous people holding particular collective knowledge have been infringed, the burden of proof shall fall on the accused party.

*Article 40. - Recovery and compensatory actions.*

Indigenous peoples holding collective knowledge may undertake the recovery and compensatory actions permitted by the legislation in force, against a third party which, in a manner contrary to the provisions of this regime, appears to have used, directly or indirectly, said collective knowledge.

TITLE XIINFRINGEMENT ACTIONS*Article 41. - Content of the accusation.*

Indigenous peoples wishing to take action in cases of infringements shall submit a request to the Competent National Authority, which shall contain:

- (a) identification of the indigenous people taking the action and its representatives;
- (b) identification and domicile of the person alleged to have committed the infringement;
- (c) an indication of the registration number protected by the right of the indigenous people making the accusation or, failing that, a description of the collective knowledge and an indication of the biological resource on which the collective knowledge referred to in the action is based;
- (d) a description of the facts constituting the infringement, with an indication of the place and the means used, or presumed to have been used, and any other relevant information;
- (e) submission or supply of evidence; and,
- (f) an explicit indication of the precautionary measures sought.

*Article 42. - Accusation procedure.*

Once the procedure of investigating the accusation has been launched, a copy of the accusations shall be sent to the accused so that he or she may present his or her evidence. The accused shall have five (5) days from the time of notification to submit his or her evidence, following which the Competent National Authority shall declare the accused party who has failed to make a submission to be in default. In the case of *ex officio* proceedings, the period for submission of evidence shall run from the date on which the Competent National

Authority notifies the accused party of the facts referred to in the investigation, as well as the classification and description of the presumed infringement. The Competent National Authority may make the inspections and investigations considered necessary, prior to forwarding the communication in question. Notification of the accusation may be made simultaneously with the conduct of an inspection, be it at the request of the party making the accusation or *ex officio*, in which case the Competent National Authority shall consider its action to be pertinent.

*Article 43. - Precautionary measures.*

At any stage of the procedure, the Competent National Authority may, within its appropriate sphere of competence, decree, either *ex officio* or on request, one or more of the following precautionary measures designed to ensure that the final decision is implemented:

- (a) the cessation of the acts referred to in the action;
- (b) the seizure, deposit or immobilization of the products developed from the collective knowledge referred to in the action;
- (c) the adoption of the measures necessary for the customs authorities to prevent the entry into the country of the products developed from the collective knowledge referred to in the action;
- (d) the temporary closure of the institution to which the accused party belongs; and,
- (e) any other measure designed to avoid any damage resulting from the act referred to in the action or whose aim is the cessation of that act.

The Competent National Authority may, where relevant, order a precautionary measure separate from that requested by the party concerned.

*Article 44. - Failure to fulfill the precautionary measure.*

If the party obliged to fulfill a precautionary measure ordered by the Competent National Authority fails to do so, a penalty shall automatically be imposed on that party, up to the maximum permitted fine, the scale for which shall be set according to the criteria used by the Competent National Authority for the issue of final resolutions. Said fines shall be paid within five (5) days of notification, following which its forced recovery shall be ordered. If the party in question continues to fail to fulfill the measure, the Competent National Authority shall impose a new fine doubling, successively and without limit, the amount of the last fine imposed, until such time as the precautionary measure ordered is fulfilled, and without prejudice to the possibility of the party responsible being reported to the State Prosecutor's Office which shall institute the appropriate criminal proceedings. The fines imposed do not prevent the Competent National Authority from imposing a separate fine or penalty at the end of the proceedings.

*Article 45. - Conciliation.*

At any stage of the proceedings, including prior to the accusation being considered, the Competent National Authority may call the parties to a conciliation hearing. The hearing shall be conducted by the Competent National Authority or the person designated by the Authority. Should both parties reach an agreement with regard to the accusation, a statement shall be drawn up containing details of any agreement, which shall be in force for extrajudicial settlement purposes. Whatever the case may be, the Competent National Authority may continue with the procedure *ex officio*, if from an analysis of the alleged facts it considers that interests of third parties may be affected.

*Article 46. - Alternative dispute - settlement mechanisms.*

At any stage of the procedure, including prior to the accusation being considered, the parties may be subject to arbitration, mediation, conciliation or joint mechanisms for the settlement of disputes involving third parties. If the parties decide to go to arbitration, they may immediately sign the corresponding arbitration agreement, in accordance with the regulations which shall be approved by the INDECOPI Directorate for that purpose. Whatever the case may be, the Competent National Authority may continue with the proceedings *ex officio*, if from an analysis of the alleged facts it considers that interests of third parties may be affected.

*Article 47. - Forms of evidence.*

The parties may offer only the following forms of evidence:

- (a) an export report;
- (b) documents including all types of written and printed material, photocopies, plans, pictures, drawings, X-rays, cinematographic reels, and other audio and video reproductions, telematics in general, and other objects and property that survey, contain or represent any fact, human activity or its result; and,
- (c) inspection.

In exceptional cases forms of proof separate from those mentioned may be produced only if, in the opinion of the Competent National Authority, they are of particular importance in the settlement of a case.

*Article 48. - Inspection.*

In cases where an inspection is to be conducted, it will be carried out by the Competent National Authority or by the person designated by the Authority for that purpose. Whenever an inspection is conducted, an official record shall be drawn up and signed by whichever person is responsible, as well as by interested parties exercising their representation, or by the person responsible for the corresponding institution. Should the accused party, their representative or the person responsible for the institution refuse to do so, that fact shall be placed on record.

*Article 49. -National Police Assistance.*

Both in the production of evidence and the conduct of proceedings, the Competent National Authority or the person designated by the Authority may request the National Police to intervene, without the need for prior notification, in order to guarantee that the requisite duties are fulfilled.

*Article 50. Production of forms of evidence/insufficient nature of proof.*

If, from a review of the information submitted, the Competent National Authority considers it necessary to have more evidence available, it shall notify the parties with a view to their providing observations to be established in the period determined by the Authority, or shall produce *ex officio* the proof it considers necessary. The parties shall provide the observations in writing, and shall attach the forms of evidence considered appropriate.

*Article 51. -Oral report.*

The Competent National Authority shall inform the parties accordingly, when the case proceedings have been forwarded for settlement. The parties may request the submission of an oral report to the Authority, within a period of five (5) days. The Competent National Authority shall decide whether to grant or reject said request, according to the importance and implications of the case.

*Article 52. -Fine -calculation basis.*

The amount of the fines applied by the Competent National Authority shall be calculated on the basis of the UIT in force on the date of voluntary payment, or on the date on which forced recovery becomes effective.

*Article 53. -Fine reduction.*

The applicable penalty fines shall be reduced by twenty-five percent (25%) in cases where the infringing party settles the fine in question before the end of the period for challenging the decision which finalized the case, provided that no challenge is made against the decision in question.

*Article 54. -Expenditure relating to the production of evidence.*

Expenditure relating to expert work carried out, evidence produced, inspections and other matters resulting from the handling of the process shall be borne initially by INDECOPI. In all cases, the final decisions shall determine whether the expenditures shall be assumed by any of the parties, and reimbursed to INDECOPI, in addition to any penalty that has been imposed.

*Article 55. -Registration of penalties.*

The Competent National Authority shall keep a record of the penalties applied, for the purposes of informing the public and detecting cases of repeat offences.

*Article 56. Penalties.*

Infringements of the rights of indigenous peoples holding collective knowledges shall give rise to the application of a penalty fine, without prejudice to the measures decreed for the cessation of the acts of infringement, or so as to prevent such acts from occurring. The fines which the Competent National Authority may establish shall be up to one hundred and fifty (150) UIT. The imposition and scale of the fines shall be determined by the Competent National Authority, taking into consideration the economic benefit obtained by the infringing party, the economic damage caused to the indigenous peoples and the conduct of the infringing party throughout the procedure. A repeat offence shall be considered an aggravating circumstance, for which the applicable penalty shall not be less than the previous penalty.

If the party obliged to pay the fine does not comply, within three (3) days, with the terms of the resolution which brings a procedure to an end, a penalty shall be imposed up to the maximum of the permitted fine, according to the criteria referred to in the previous article, and its joint collections shall be ordered. If the party concerned continues to fail to pay the fine, the Competent National Authority shall double, successively and without limit, the fine imposed until such time as compliance with the resolution is achieved, without prejudice to the possibility of reporting the accused party to the State Prosecutor's Office, so that it may institute appropriate criminal proceedings.

TITLE XIICOMPETENT NATIONAL AUTHORITY AND MULTIDISCIPLINARYADVISORY COMMITTEE*Article 57. - Competent National Authority.*

The Office of Inventions and New Technologies of the National Institute for the Defense of Competition and Intellectual Property (INDECOPI) shall be competent to hear and settle in the first instance all matters relating to the protection of the collective knowledge of indigenous peoples, including the judicial processes in related administrative proceedings. The Intellectual Property Chamber of the INDECOPITribunal for the Defense of Competition and Intellectual Property shall hear and settle appeals procedures as a second and final administrative authority.

*Article 58. - Functions of the Office of Inventions and New Technologies.*

The INDECOPI Office of Inventions and New Technologies shall be entrusted with the following functions:

- (a) producing and maintaining the Register of Collective Knowledge of Indigenous Peoples;
- (b) producing and maintaining the Register of Licenses for Use of Collective Knowledge;

- (c) assessing the validity of the license contracts for collective knowledge of indigenous peoples, taking into account the opinion of the Multidisciplinary Advisory Committee ;
- (d) supervising the Administrative Committee of the Fund for the Development of Indigenous Peoples in the exercise of its functions, since the Office is authorized to impose penalties on those bodies, such as a warning, temporary suspension in the exercise of their functions or the permanent separation of their duties, in cases where they infringe the provisions of the current regime or related regulations, or they are involved in occurrences affecting the interests of indigenous peoples, without prejudice to appropriate criminal penalties or civil actions; and,
- (e) exercising the other functions entrusted to it under this instrument.

*Article 59. - Supervision by the Competent National Authority of the Administrative Committee*

The INDECOPI Office of Inventions and New Technologies may request from the Administrative Committee of the Fund for the Development of Indigenous Peoples any type of information relating to the administration of said Fund, order inspections or hearings, examine its books and documents, and appoint a representative to attend its meetings in an advisory capacity but without voting rights.

Any resolution ordering a hearing to be held shall be justified.

*Article 60. - Multidisciplinary Advisory Committee.*

The members of the Multidisciplinary Advisory Committee shall be appointed by the INDECOPID Directorate, in coordination with the Technical Secretariat of Indigenous Affairs of the Ministry for the Protection of Women and Human Development (PROMUDEH). This Committee shall carry out the duties referred to in Article 35, support the INDECOPI Office of Inventions and New Technologies in the discharge of its duties, and offer advice to the representatives of the indigenous peoples requesting it in fields relating to this regime.

### TITLEX III

#### CHALLENGES

*Article 61. - Reconsideration procedure.*

Apart from in cases of infringement actions, a reconsideration procedure may be instituted against resolutions issued by the Office of Inventions and New Technologies within fifteen (15) days of their notification, and shall be accompanied by new instrumental evidence. In cases of infringement actions, the period for launching this procedure shall be five (5) days. The person affected by a precautionary measure may request the Competent National Authority to modify or lift it, if new evidence justifying such a step is provided.



*Article 62. –Appeal procedure.*

Apart from incases of infringement actions, an appeal procedure may be lodged, but only against the resolution finalizing the case issued by the Office of Inventions and New Technologies, within fifteen (15) days of its notification. An appeal procedure may not be lodged against the resolutions of first instance imposing precautionary or preventive measures. In cases of infringement actions, the period for lodging this appeal shall be five (5) days.

*Article 63. -Lodging an appeal procedure.*

Appeal procedures shall be lodged with the Office of Inventions and New Technologies, with the submission of new documents, a different interpretation of the evidence produced, or purely legal issues. Once the requirements of this article and of the INDECOPIS Single Text on Administrative Procedures (TUPA) have been verified, the Office shall grant the appeal and submit the case records to the second administrative authority.

TITLE XIVCOURTROOM PROCEDURE*Article 64. -Procedure of second instance.*

Once the case records have been received by the Intellectual Property Chamber of the INDECOPITribunal for the Defense of Competition and Intellectual Property, a copy of the appeal shall be forwarded to the other party so that it may present its arguments, in a period equivalent to that made available to the appellant to lodge its appeal.

*Article 65. -Forms of evidence and oral statement.*

No forms of evidence shall be permitted apart from documents. Any of the parties may, without prejudice, request permission to speak, and shall specify whether they wish to refer to matters *defacto* or *dejure*. The acceptance or rejection of said request shall lie with the Tribunal Chamber. Once the parties have been summoned to make a statement, this shall be done with those persons attending the hearing.

COMPLEMENTARY PROVISIONS

Independence of the intellectual property legislation in force

*FIRST.-*

This special protection regime shall be independent of the provisions of Decisions 344, 345 and 391 of the Commission of the Cartagena Agreement, Legislative Decrees Nos. 822 and 823, and Supreme Decree No. 008 -96-ITINCI.

Submission of the license contract as a requirement for obtaining a patent or a plant breeder's certificate

*SECOND.* -

In cases where a patent or plant breeder's certificate is issued in relation to products or processes obtained or developed from collective knowledge, the requesting party shall be obliged to submit a copy of the license contract, as a prerequisite for the granting of the respective royalty, unless the collective knowledge in question is in the public domain. The failure to fulfill this obligation shall serve as grounds for rejection of, where appropriate, declaring null and void the patent or breeder's certificate referred to.

#### TRANSITIONAL PROVISIONS

Regulations of the Fund for the Development of Indigenous Peoples

*FIRST.* -

Within ninety (90) days of the entry into force of this regime, regulations for the organization and functioning of the Fund for the Development of Indigenous Peoples shall be issued.

The Regulations shall envisage preferential benefits for those indigenous peoples who have registered their collective knowledge.

Establishment of the Administrative Committee for the Development of Indigenous Peoples

*SECOND.* -

PROMUDEH shall be responsible for establishing the Administrative Committee of the Fund for the Development of Indigenous Peoples, in coordination with indigenous peoples.

[End of Annex and of document]